July 10, 2009

RESPONSES TO SFP QUESTIONS

The bid specifications allowed questions to be asked through July 6th and the Department was obligated to respond by July 14th. A total of three questions were received. This document shows those three questions and the Department's responses.

<u>Question 1:</u> Will the SFP allow for a response in which the assigned risk carrier bids at an LCM which is lower than 2.50, but also asks for some form of voluntary market subsidy which conforms with Part 5 of the SFP?

<u>Response 1:</u> No. Section 44-3,158 is the primary law governing the establishment of Nebraska's assigned risk plan. A couple of sentences contained in that law state the following:

> "If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 shall not be considered unreasonably high for the purposes of this section."

The clear reading of this law is that no sharing of losses can occur unless necessary to reduce the plan's overall LCM from something greater than 2.50 to a lower LCM, but not less than 2.50. In other words, the only way that we can have an LCM less than 2.50 is if an insurer bids to write at that level with no loss sharing. This has been the case several times in the past.

A bidder with a proposal that they otherwise believe is competitive, but that has a "subsidy" and an LCM lower than 2.50 is advised to increase their bid to the point that they no longer believe that a subsidy is necessary. If this revised bid contemplates less than a 2.50 LCM, then that should be the carrier's bid. If the bid that would no longer require a subsidy is higher than 2.50, then the insurer is advised to submit a bid using a 2.50 LCM, identifying whatever subsidy is necessary to support the 2.50 LCM. The insurer could also submit bids with higher than a 2.50 LCM and a smaller subsidy or no subsidy. Multiple bids are allowed and are the safest way to address the situation when the insurer is not sure what the Department might select. If no unsubsidized bid is available at a 2.50 or lower LCM, then it is entirely possible that the Department could choose a higher bid with little or no subsidy instead of a 2.50 bid with a more substantial subsidy.

<u>Question 2:</u> To what extent will a bidder's financial strength be factored into the selection of a carrier under this SFP?

<u>Response 2:</u> A bidder's financial strength will be a consideration, but it is difficult to place a specific value or factor upon it. We want to have a carrier where we feel relatively comfortable that it will be able to fulfill its obligations for a 5-year term, as we have extended our past

contracts to the full 5-year term permitted by law. (The bid is for a 3-year term, with an option to extend to 4 or 5 years if both parties agree.)

Question 3: While there appears to be no formulaic scoring methodology for evaluating bid responses, assuming that bidders are able to meet all minimum service performance requirements, it appears that preference will be given to the following criteria in order of importance: 1. Responses that require no voluntary market subsidies, 2. Responses with lower rates as expressed through a lower LCM, 3. Responses that provide enhanced services. Is this an accurate representation of the bid evaluation criteria?

Response 3: You are correct that there is no formulaic scoring methodology, so I can't agree or disagree with your estimation:

(1) The first criteria that you have given (no subsidy required) would certainly be our first preference, as long as it came from an insurer that we felt comfortable with its ability to handle the business for 5 years. After all, history shows that market swings are the norm, and we don't want to feel that an insurer couldn't handle a fairly rapid doubling of its business if market conditions worsened.

(2) If we have multiple bids with no subsidy, then the lowest bid would obviously be given first preference, but a difference of only a few points (e.g., 2.25 versus 2.28) could be overshadowed by our evaluation of the bidders' abilities to handle the contract. If all bids involve subsidies, then – all other things being equal – we're going to look at the amount of the subsidization versus the difference in the LCM (e.g., 2.50 versus 2.58). We've never had to ask the voluntary market to contribute since moving away from a National Pool plan, and we'd place considerable value in bid where "reinsurance" would not be touched except in the case of an extreme event, versus a "reinsurance" proposal that involved working layers or a higher likelihood of being triggered. Again, if a bidder has doubts, the safest thing to do is to submit alternate bids.

(3) Bells and whistles (e.g., inspecting every risk with lower premium thresholds than mentioned in our spec's) will be given some consideration, but they will probably be given a relatively small value after everything else is considered. Of course, that's just speculation at this point, as perhaps we are failing to think of every nifty idea that someone may have.

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